



METROPOLITAN
TRANSPORTATION
COMMISSION

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Memorandum

TO: Operations Committee

DATE: December 3, 2010

FR: Steve Heminger

W.I.: 2654

RE: Cancellation of UPP IntelliDriveSM Phase 2 Project

On October 8, 2010, the Operations Committee approved staff's recommendation to negotiate and enter into a contract with Mixon/Hill, Inc. to implement Phase 2 of the IntelliDriveSM HOT Lane project. On October 13, MTC received a protest from another proposer, Kapsch TrafficCom US Corp.

Background of UPP IntelliDriveSM Project

In March 2009, MTC received a grant through the Urban Partnership Program (UPP) from the US Department of Transportation (US DOT), for several projects. US DOT was specifically interested in MTC pursuing an IntelliDriveSM pilot project on its behalf. We agreed to a budget of \$1,052,500 to test the capabilities of IntelliDriveSM technology to improve HOT lane operations.

IntelliDriveSM (formerly known as Vehicle Infrastructure Integration, or VII) is a multimodal initiative that aims to enable safe, interoperable networked wireless communications among vehicles, the infrastructure, and passengers' personal communications devices. Under the UPP grant, MTC planned to analyze and test the feasibility and potential value of using IntelliDriveSM technologies to support high occupancy toll (HOT) and express lane operations. MTC divided delivery of the IntelliDriveSM HOT lane project into two phases: 1) Research to identify specific aspects of HOT lane operation that could benefit from IntelliDriveSM technologies and would be feasible for field testing (\$50,000); and 2) Operation of field testing of use cases identified in Phase 1 (\$1,002,500).

MTC selected Mixon/Hill, Inc to be the consultant for Phase 1, which required preparation of a white paper to do the following: 1) identify opportunities and challenges associated with IntelliDriveSM technologies; 2) determine which applications could support HOT lane operations; and, 3) provide recommendations for specific components that could be demonstrated during Phase 2. MTC staff presented the findings from the white paper at a workshop, which provided a means for private industry and public agencies to give feedback and engage in discussions about the white paper's recommendations and the subsequent field demonstration in Phase 2. Based on the feedback from the workshop, MTC selected several use cases and IntelliDriveSM technologies to test in Phase 2, and further refined them in the Phase 2 RFP after soliciting industry feedback on a draft RFP.

In order to attract qualified consultants for Phase 1, MTC staff and Office of General Counsel designed the two-part procurement process so that the development of the Phase 2 request for

proposal (RFP) – the final selection of use cases, IntelliDriveSM technologies, and the scope of work – would be accomplished by MTC staff, enabling the Phase 1 consultant to be eligible to propose for the Phase 2 RFP. The Phase 2 RFP explicitly stated that the Phase 1 consultant would be eligible to submit a proposal for Phase 2.

Kapsch's Protest

Following the October 8, 2010 Operations Committee approval of staff's recommendation of Mixon/Hill, Inc. to be the Phase 2 Contractor, Kapsch filed its protest. Its protest of the selection of Mixon/Hill contained 14 separate allegations, some of which were minor procedural issues, but several of which went to the substance of the procurement process. The main allegation was that Mixon/Hill had an organizational conflict of interest for Phase 2, because Mixon/Hill had been the Phase 1 Contractor. An organizational conflict of interest exists when a firm, based on its other activities, relationships, or contracts, has an unfair competitive advantage in the selection process.

The Phase 2 RFP required interested firms to submit objections to specific RFP provisions prior to proposal submission. Kapsch did not file a timely objection to the statement in the RFP that Mixon-Hill would be allowed to propose for Phase 2. On that basis alone, the allegation relating to conflict of interest could have been thrown out. In addition, the staff protest review officer appointed by the Executive Office, in consultation with the Office of General Counsel, made an initial finding that appropriate steps were taken with the Phase 1 and 2 procurements to insulate the Phase 2 design from the influence of the Phase 1 consultant. However, we have determined that the best course of action is not to proceed with the project and in fact, to return the grant to US DOT, based upon the following:

- 1) Most of Kapsch's 14 allegations, if proven to have substance, could be remedied with a re-bid. However, a re-bid would likely face the same challenge from Kapsch: that Mixon-Hill should not be allowed to compete for Phase 2. If we allowed Mixon-Hill to participate, we would have to defend the procurement design, which we believe was sound. The alternative would be to adopt Kapsch's narrow interpretation of the operative conflict of interest principles in order to avoid a protest, which would exclude Mixon-Hill from the competition. Mixon-Hill operated in good faith reliance on MTC's representation that they would be eligible to compete for the \$1 million plus contract if they assisted in the information gathering \$50,000 contract at the front end; such an outcome is not fair to Mixon-Hill.
- 2) MTC is not uniquely positioned to do this work on behalf of the US DOT; it could be addressed through other operational tests elsewhere. The pilot will not provide essential information for MTC's own strategic thinking regarding HOT lane operation. Expending the staff time to re-issue the RFP and resolve another likely protest is not the best use of MTC resources.

US DOT has agreed to MTC's cancellation of the UPP IntelliDriveSM project. MTC will return the remaining UPP grant funds for this project to US DOT.

Steve Heminger

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